

Supreme Court of the United States

OCTOBER TERM, 1969

No. 271

MICHAEL BUIE,

Petitioner,

versus

UNITED STATES

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT
OF APPEALS FOR THE SECOND CIRCUIT

INDEX

Page

Record from the United States District Court for the South-
ern District of New York

Relevant docket entries 1

Indictment—Second Count 2

Transcript of trial, April 17 & 18 and May 24, 1968
(excerpts) 3

Judgment, May 24, 1968 9

Judgment, July 15, 1968 11

Proceedings in the United States Court of Appeals for the
Second Circuit 13

Opinion, Smith, J., March 12, 1969 13

Judgment 19

Order granting motion for leave to proceed in forma pauperis
and granting petition for writ of certiorari 20

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

68 Crim. 119

UNITED STATES

vs.

MICHAEL S. BUIE

RELEVANT DOCKET ENTRIES

Date

February 2, 1968	Filed indictment.
February 27, 1968	Pleads not guilty.
April 17, 1968	Before Cannella, J. Trial begun (jury)
April 19, 1968	Trial continued and concluded. Jury finds the Defendant Not Guilty on Count 1; Guilty on Count 2; Not Guilty on Count 3.
May 24, 1968	Filed Judgment. It is adjudged that the Defendant is hereby placed in the custody of the Attorney General or his author- ized representative on Count 2 for an examination to determine whether he is an addict and is likely to be rehabilitated through treatment.
July 15, 1968	Filed Judgment. It is adjudged that the Defendant is hereby committed to the Custody of the Attorney General or his authorized representative for treatment and supervision pursuant to Section 4253(a) of Title 18, U.S. Code until re- leased by the United States Board of Parole. Such commitment shall be for an indefinite period but not to exceed five (5) years.

Date

- | | |
|-------------------|---|
| July 24, 1968 | Filed Notice of Appeal, dated July 18, 1968, to the U.S.C.A. from the judgment entered on July 15, 1968. |
| August 16, 1968 | Filed notice of motion for leave to appeal in forma pauperis from the judgment of July 15, 1968, granting extension of time to perfect the appeal, etc. |
| September 4, 1968 | Filed order that the Defendant have leave to appeal in forma pauperis from the Judgment entered on July 15, 1968 without prepayment of costs and fees, etc. |

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

INDICTMENT: SECOND COUNT

The Grand Jury further charges:

On or about the 18th day of May, 1967, in the Southern District of New York, MICHAEL S. BUIE, the defendant, unlawfully, wilfully and knowingly did transfer to Dennis V. Nargi approximately 27 grams of marihuana, in that said transfer was not in pursuance of a written order of the said Dennis V. Nargi on a form issued in blank for that purpose by the Secretary of the Treasury of the United States, or his delegate. (Sections 4742(a) and 7237(b), Title 26, United States Code).

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

TRANSCRIPT OF TRIAL, APRIL 17 & 18, 1968

[fol. 2]

MISS TAYLOR: Yes, your Honor. I believe we do have some motions that we have to make.

THE COURT: Yes. I have read your papers and I think that the first one that I would like to decide is the motion which you made to dismiss on the grounds that certain areas required by the law would be self-incriminating and therefore under the Grosso and Marchetti cases it should be dismissed. I am prepared to rule on that and the Court rules in the following fashion:

The defendant having moved for an order dismissing the indictment on the ground that the statute under which the defendant has been admitted violate his Fifth Amendment privilege against self-incrimination and he urges that he may not be punished for failure to comply with the requirements, citing the line of cases decided by the Supreme Court on January 29, 1968, namely Marchetti v. the United States, 390 US 39, decided in 1968, [fol. 3] and Grosso v. the United States, decided in 390 US 62, also in 1968.

The nub of the allegation is that if the defendant would have registered or paid taxes under the statute he would have identified himself as being an individual involved in activities inherently suspect of criminal activities and he would have placed himself in an area permeated with criminal statutes.

In aid of his contention the defendant has cited the dissent of Judge Warren in the Marchetti case, suggesting the possible application of this rule to this case.

The government, in defense of these allegations, suggests the Supreme Court had the opportunity to consider this very question and ruled against the United States, 360 F. 2d 215, a Fifth Circuit case, of 1966, and in that case, in 3385 US 1018 in 1967, the Supreme Court denied certiorari.

Of course that particular case came before them precisely at the time that they were considering the Marchetti case.

[fol. 4] In this district the Court finds that two judges have rejected the contentions made by the defendant, namely Judge Motley, in U. S. v. Burgos, 67 Cr. 483, an unreported opinion in the Southern District here filed February 6, 1968, in which she went into a lengthy analysis of the cases in this area, and decided that while the reasoning may have eroded to some extent, it is still binding in this type of a case.

Similarly, Judge Frankel, citing the Burgos opinion, applied a similar rule in 67 Cr. 893, also an unreported case, United States v. Smith, in the Southern District of New York, decided on March 5, 1968.

Under the circumstances, I similarly adopt the reasoning and the rulings of my colleagues and I similarly deny this motion with an exception to the defendant.

* * * *

[fol. 23] DIRECT EXAMINATION BY MR. ROONEY:

Q Agent Nargi, directing your attention to May 18, 1967, at approximately 5 p.m., were you on duty on that occasion?

A Yes, sir, I was. I was with Agent Halperin and we went to 208 Forsyth Street and entered Mr. Buie's apartment. We were admitted by a female, and about five minutes later Mr. Buie entered the apartment.

I asked him if he could sell me any hashish and he said that he could sell me an ounce for \$90. He then asked me to call him back at 7:30, and he furnished me with a telephone number.

At 7:30 on that same night I did call him back and he said that he could sell me the hashish and asked me to [fol. 24] meet him at First Avenue and 4th Street at 9 p.m.

At 9 p.m. that night Agent Halperin and I went to First Avenue and Forsyth Street and about 15 minutes later Buie entered our car. He said that he could not sell us hashish that night, and I asked him if he could sell us any marijuana. He said that he could, and asked me

to drive with him and Agent Halperin to East Houston Street and Attorney Street. On entering that corner I stopped the car and Mr. Buie exited our car.

He then returned at about 10:20 p.m. that night and handed me five small Manila envelopes, one of which was opened. I examined the contents of one of these envelopes and gave Mr. Buie \$20. We then drove with Mr. Buie back to Forsyth Street and East Houston Street where he left our car.

Agent Halperin and I then went back to the Bureau of Narcotics office where he initialed and dated the evidence and Agent Halperin maintained custody of it.

On the next day, May 19, I witnessed Agent Halperin [fol. 25] weighing and sealing the evidence before he returned it to the United States Chemists.

Q By the way, is Forsyth Street as well as Attorney Street located in the Borough of Manhattan?

A Yes, sir.

Q Agent Buie, on this occasion, May 18, when you received the five Manila envelopes, did you give Mr. Buie a form issued by the United States Secretary of the Treasury or its delegate for the purchase of this substance?

A No, sir.

Q Did you have such a form?

A No, sir.

Q Did he give you such a form?

A No, sir.

* * * *

[fol. 40] Q The first time that you came to Mr. Buie's apartment, as I understand it, you came with Mr. Arlaus, is that correct?

A Yes, Madam.

Q When you came to the lower east side, you parked your car?

A Yes, I parked my car on East Houston Street.

Q Then what did you do?

A Agent Halperin and I stayed in the car while Mr. Arlaus left and walked down Forsyth Street.

Q When Mr. Arlaus—he came back, I take it, after that?

A Yes, after about ten minutes he returned.

Q What did he say at that time?

A He said that his friend could obtain the marijuana that we wanted.

[fol. 41] Q Then what did you do?

A Agent Halperin and myself and Mr. Arlaus then went into Mr. Buie's apartment.

Q What was Mr. Buie doing at that time when you sent into the apartment?

A We were introduced to him in the kitchen. I don't really know what he was doing.

Q Was he sitting or standing or talking?

A Well, when I first saw him he was standing in the kitchen, and then he left the kitchen and returned with the package.

Q Would you please tell me, when you first walked into the apartment, what did you say and what did the defendant Buie say?

A When I first met Buie in the kitchen?

Q Yes, right.

A I introduced myself as Danny and he introduced himself as Mike, and Agent Halperin introduced himself as Ray.

Q What did you say?

A I asked him if he had the half a pound of marijuana.

[fol. 42] Q What did Mr. Arlaus—what was he doing at this time?

A After Mr. Arlaus introduced everybody, he really wasn't doing anything. He was just watching and listening to Mr. Buie and myself.

Q How old was Mr. Arlaus?

A I believe at that time he was 27, 28.

Q Did Mr. Arlaus tell you prior to the time that you came to this apartment? Did he tell you that he had made any phone calls to Michael Buie?

A I don't know exactly if he said phone calls, but he did say that if we went into New York City that he could obtain a half a pound of marijuana, I would be able to buy half a pound of marijuana.

Q Did he tell you from whom?

A He didn't tell me the last name, no.

Q What did he say?

A I believe he just said a friend.

* * * *

[fol. 126] MISS TAYLOR: I will renew my motion again with respect to Count 3 and also I will renew my motion with respect to all of the three counts on the basis that all three counts violate the rights of the defendant under the Fifth Amendment as set forth in my motion earlier decided by your Honor.

THE COURT: The motion is denied in each case as to each count on that ground which has just been stated.

* * * *

[fol. 221] THE COURT: I assume you renew your motions?

MISS TAYLOR: Yes, I would like to renew my motion for a judgment of acquittal on the basis that the People have failed to prove this case beyond a reasonable doubt and, secondly, on the basis that the statutes here involved violate the defendant's rights under the Fifth Amendment under the United States Constitution pursuant to the argument that I had made in the motion prior to trial.

I would further make a motion for judgment of acquittal on the third count on the basis that there has been no proof that this was imported and in fact at this present time the defendant himself has testified that he did not know whether or not it was imported.

THE COURT: Each motion is denied with an exception to the defendant.

* * * *

[fol. 373] May 24, 1968

MISS TAYLOR: I have a fourth ground for the motion for a verdict of acquittal. I believe that I would also ask for acquittal on the grounds, again, that the statute under which the defendant was indicted was unconstitutional based upon the cases, the previous cases,

that I had cited: the marijuana statutes violate the defendant's rights.

THE COURT: What do you mean "was unconstitutional"?

[fol. 374] MISS TAYLOR: Is unconstitutional.

THE COURT: The statute has not deceased, has it? It is still in existence?

MISS TAYLOR: It is unconstitutional.

THE COURT: Is unconstitutional?

MISS TAYLOR: Right.

THE COURT: Those, then, are the four grounds?

MISS TAYLOR: On that count.

THE COURT: I will treat them in the inverse order in which you made them.

The motion is denied on the ground of unconstitutionality of the statute because the Court finds in the present state of the law it is constitutional.

* * * *

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

No. 68 Cr. 119

UNITED STATES OF AMERICA

v.

MICHAEL S. BUIE

JUDGMENT—Filed May 24, 1968

On this 24th day of May, 1968, came the attorney for the government and the defendant appeared in person and ¹ by counsel

IT IS ADJUDGED that the defendant upon his plea of ² not guilty and a verdict of guilty by a jury has been convicted of the offense of unlawfully, wilfully and knowingly transferring marihuana not in pursuance of a written order issued in blank for that purpose by the Secretary of the Treasury of the United States, or his delegate (Title 26, Sections 4742(a) and 7237(b) U.S. Code) as charged ³ in count 2 and the court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

IT IS ADJUDGED that the defendant is guilty as charged and convicted.

IT IS ADJUDGED that the defendant is hereby placed in the custody of the Attorney General or his authorized representative on count 2 for an examination to determine whether he is an addict and is likely to be rehabilitated through treatment.

The Attorney General shall report to the Court within THIRTY (30) DAYS or any additional period hereafter granted by the Court, the results of such examination and make any recommendations he deems desirable (18 U.S.C. 4252) and following such examination the defendant shall be returned to the Court for imposition of such sentence as the Court may then find and determine to

be authorized and appropriate or required by law to be imposed whether under Title 18, U.S.C. 4253 or whether under Title 26, Sections 4742(a) and 7237(b) U.S. Code.

IT IS ORDERED that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

JOHN M. CANNELLA
United States District Judge.

JOHN J. OLEAR, JR.
Clerk.

¹ Insert "by [name of counsel], counsel" or "without counsel; the court advised the defendant of his rights to counsel and asked him whether he desired to have counsel appointed by the court, and the defendant thereupon stated that he waived the right to the assistance of counsel." ² Insert (1) "guilty and the court being satisfied there is a factual basis for the plea," (2) "not guilty, and a verdict of guilty," (3) "not guilty, and a finding of guilty," (4) "nolo contendere," as the case may be. ³ Insert "in count(s) number" if required. ⁴ Enter (1) sentence or sentences, specifying counts if any; (2) whether sentences are to run concurrently or consecutively and, if consecutively, when each term is to begin with reference to termination of preceding term or to any other outstanding unserved sentence; (3) whether defendant is to be further imprisoned until payment of the fine or fine and costs, or until he is otherwise discharged as provided by law. ⁵ Enter any order with respect to suspension and probation. ⁶ For use of Court wishing to recommend a particular institution.

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

No. 68 Cr. 119

UNITED STATES OF AMERICA

v.

MICHAEL S. BUIE

JUDGMENT—July 15, 1968

On this 15th day of July, 1968, came the attorney for the government and the defendant appeared in person and¹ by counsel, and the Court having placed the defendant in the custody of the Attorney General for an examination pursuant to Title 18, Section 4252, U.S. Code, and the court having duly considered the results of such examination and the recommendations of the Attorney General thereon,

IT IS ADJUDGED that the defendant upon his plea of² Not Guilty and a verdict of Guilty by a jury has been convicted of the offense of unlawfully, wilfully and knowingly transferring marihuana to another not in pursuance of a written order on a form issued in blank for that purpose by the Secretary of the Treasury of the United States or his delegate (Title 26, Sections 4742(a) and 7237(b), U.S. Code) as charged³ in Count 2 and the court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

IT IS ADJUDGED that the defendant is guilty as charged and convicted, and the Court having determined that the defendant is an addict and likely to be rehabilitated through treatment,

IT IS ADJUDGED that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for treatment and supervision pursuant to Section 4253(a) of Title 18, U.S. Code until released by

the United States Board of Parole. Such commitment shall be for an indefinite period but not to exceed FIVE (5) YEARS.

IT IS ORDERED that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

JOHN M. CANNELLA
United States District Judge.

JOHN J. OLEAR, JR.
Clerk.

¹ Insert "by [name of counsel], counsel" or "without counsel; the court advised the defendant of his rights to counsel and asked him whether he desired to have counsel appointed by the court, and the defendant thereupon stated that he waived the right to the assistance of counsel." ² Insert (1) "guilty and the court being satisfied there is a factual basis for the plea," (2) "not guilty, and a verdict of guilty," (3) "not guilty, and a finding of guilty," (4) "nolo contendere," as the case may be. ³ Insert "in count(s) number" if required. ⁴ Enter (1) sentence or sentences, specifying counts if any; (2) whether sentences are to run concurrently or consecutively and, if consecutively, when each term is to begin with reference to termination of preceding term or to any other outstanding unserved sentence; (3) whether defendant is to be further imprisoned until payment of the fine or fine and costs, or until he is otherwise discharged as provided by law. ⁵ Enter any order with respect to suspension and probation. ⁶ For use of Court wishing to recommend a particular institution.

IN THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

No. 346—September Term, 1968.

Argued January 23, 1969

Docket No. 32826

UNITED STATES OF AMERICA, APPELLEE

—v.—

MICHAEL S. BUIE, APPELLANT

Before: MEDINA, SMITH and HAYS, *Circuit Judges*.

Appeal from judgment of conviction and sentence on trial to the jury in the United States District Court for the Southern District of New York, John M. Cannella, *Judge*, for unlawful transfer of marihuana in violation of 26 U. S. C. § 4742(a) and § 7237(b). Affirmed.

GARY P. NAFTALIS, Asst. United States Attorney, Southern District of New York (Robert M. Morgenthau, United States Attorney and Douglas S. Liebhafsky, Asst. United States Attorney, on the brief), *for appellee*.

DAVID A. DIAMOND, New York, N. Y. (Harold J. Rothwax, New York, New York, on the brief), *for appellant*.

OPINION—Decided March 12, 1969

SMITH, *Circuit Judge*:

The defendant, Michael S. Buie, was convicted after jury trial of selling marihuana without the mandatory

written order form required by 26 U. S. C. § 4742(a).¹ He was sentenced for an indefinite term not to exceed five years under the narcotics treatment and rehabilitation provisions of 18 U. S. C. § 4253(a).

The main question presented is whether the Fifth Amendment privilege against self-incrimination can be invoked in a situation where the seller is convicted of selling marihuana in violation of section 4742(a). Since we are unable to distinguish this case from a prosecution for the unlawful transfer of narcotics under 26 U. S. C. § 4705(a), we affirm the conviction on the basis of *United States v. Minor*, 398 F. 2d 511 (2 Cir. 1968).

Section 4705(a) prohibits the sale of narcotics drugs unless the buyer furnishes a written order form "issued in blank for that purpose by the Secretary [of the Treasury] or his delegate." In *Minor*, we concluded that the seller is not required to register or in any way incriminate himself in order to comply fully with the provisions of section 4705(a), since it is "the purchaser of narcotics and not the seller [who] is under compulsion to apply for and obtain the requisite order form." *Id.* at 515. The seller, therefore, can comply with section 4705(a) simply by requiring prospective purchasers to produce a valid written order form. Although 26 C. F. R. § 151.201 requires the seller to write his name on the written order form and forward a triplicate copy to the district supervisor, this is not done until after the transaction is completed, and thus it is possible for the seller to comply with the literal requirements of section 4705(a) and avoid the self-incrimination dilemma.

The defendant urges that 26 U. S. C. § 4742(a) is significantly different from the transfer provision we upheld in *Minor*. Actually there is only one difference, and it is not crucial. Like 26 U. S. C. § 4705(a), the section

¹ Section 4742(a) provides that:

"It shall be unlawful for any person, whether or not required to pay a special tax and register under sections 4751 to 4753 inclusive, to transfer marihuana, except in pursuance of a written order of the person to whom such marihuana is transferred, on a form to be issued in blank for that purpose by the Secretary [of the Treasury] or his delegate." [Emphasis added.]

involved here prohibits any transfer of marihuana unless the buyer furnishes the mandatory written order form. Before the purchaser can obtain the requisite order form, however, he must give not only his own name but the name of the proposed seller and state how much marihuana he expects to purchase.² Since the defendant has been convicted of selling marihuana in violation of 26 U. S. C. § 4742(a), and since section 4742(c) states those conditions which must be met before the purchaser can obtain a written order form, we must consider these two sections together in determining whether compliance by the purchaser would have posed a self-incrimination dilemma to the seller. See *Grosso v. United States*, 390 U. S. 62, 65 (1968), where Mr. Justice Harlan said that the risk of self-incrimination "may properly be determined only after assessment of the hazards of incrimination which would result from 'literal and full compliance' with all of the statutory requirements."

If section 4742(c) required the seller rather than the purchaser to write his name on the order form involved here as a prerequisite to any sale, this would undoubtedly violate the privilege against self-incrimination, since the seller would be "required, on pain of criminal prosecution, to provide information which he might reasonably suppose would be available to prosecuting authorities, and which would surely prove a significant 'link in the chain' of evidence tending to establish his guilt." *Marchetti v. United States*, 390 U. S. 39, 49 (1968). Similarly, the self-incrimination dilemma would be real if the statute required both buyer and seller to write their names on the written order form in advance of the proposed sale.

Our question, then, is whether the result should be different if the purchaser gives the name of the proposed seller. We think it should. As Judge Kaufman wrote in

² 26 U. S. C. § 4742(c) provides in pertinent part:

"Whenever any of such forms are sold, the Secretary or his delegate shall cause the date of sale, the name and address of the proposed vendor, the name and address of the purchaser, and the amount of marihuana ordered to be plainly written or stamped thereon before delivering the same."

Minor, the privilege against self-incrimination is personal, and the seller therefore "cannot benefit from the privilege allegedly available to the buyer." 398 F. 2d at 513. Even if we assume, then, that 26 U. S. C. § 4742 (a) poses a self-incrimination dilemma to the *buyer*, *Minor* holds that the Fifth Amendment does not necessarily give immunity to the *seller*. "[I]t is clear that standing under the Fifth Amendment is not freely negotiable nor transferable." *Id.* at 513. This case is conceptually no different from a prosecution based on incriminatory admissions voluntarily made to a police informant. See *Hoffa v. United States*, 385 U. S. 293, 304 (1966).

The defendant also attempts to distinguish this case from *Minor* by suggesting that 26 U. S. C. § 4742(a) is aimed at a class "inherently suspect of criminal activity." *Marchetti v. United States*, *supra* at 57. In *Minor*, we held that section 4705(a) was "one section of an important and significant statutory scheme regulating the conduct of a lawful business," *id.* at 516, and concluded from the sizable class of legitimate users that the statute was not directed primarily at the criminal underworld. It is, of course, true that only 83 persons were registered under the marihuana laws in 1967. See U. S. Treasury Department, Bureau of Narcotics, Traffic in Opium and Other Dangerous Drugs 42 (1967). In the first year following enactment of the marihuana registration statute, however, there were 3,665 marihuana registrants,³ a figure which strikes us as plainly not insignificant and which shows that there was a legitimate traffic in marihuana requiring regulation.

The defendant also raises a number of related claims on the defense of entrapment. At trial Buie admitted selling quantities of marihuana without the written order form on May 8, 1967 (Count I) and May 18, 1967 (Count II), but said he had been entrapped. He testified that he had been introduced to government agents by a friend

³ These figures are for 1938, the first year of operation under the predecessor to 26 U. S. C. § 4753. See U. S. Treasury Department, Bureau of Narcotics, Traffic in Opium and Other Dangerous Drugs 56 (1966).

named Arlaus, and that he had been urged by Arlaus to make the illegal sales. While admitting that Arlaus was present at only the first of the two sales, Buie testified that he would not have made the second sale except for the fact that the agents claimed the friendship of Arlaus. The jury returned verdicts of not guilty on Count I and guilty on Count II.⁴

Contending that the jury, if properly instructed, could have found that Arlaus induced the second sale as well as the first, Buie asserts that the court erred in instructing the jury to consider each count separately. More specifically, he suggests that the jury should have been told to consider the possible effect on subsequent sales of any entrapment in connection with the first sale. Since there was no evidence linking Arlaus to the second transaction, however, we do not think that the circumstances warranted such instructions. Compare *Sherman v. United States*, 356 U. S. 369 (1958), where the government informer actively participated in every sale charged in the indictment. Even if we assume that Arlaus entrapped Buie into making the first sale, it does not follow that entrapment as to one transaction necessarily gives immunity as to all transactions. In any event, these instructions were not requested by the defendant. Rule 30, Fed. R. Crim. P.; *United States v. Re*, 336 F. 2d 306, 316 (2 Cir.), cert. denied 379 U. S. 904 (1964).

Buie also contends that the court should have given instructions which would have allowed the jury to find that Arlaus had acted either knowingly or unknowingly as a government agent. While the entrapment defense does not extend to inducement by private citizens, *Pearson v. United States*, 378 F. 2d 555 (5 Cir. 1967), the defense is available, of course, where government agents act through private citizens. *Johnson v. United States*, 317 F. 2d 127, 128 (D. C. Cir. 1963). Judge Cannella did instruct the jury that it should acquit the defendant if it found that the disputed sales were "induced by the

⁴ A third count, not relevant here, charged the defendant with the possession of illegally imported marihuana in violation of 21 U. S. C. § 176(a). He was acquitted on this count.

government, either by themselves or with the aid and use of Arlaus," and we think these instructions were sufficient.⁵ Indeed, Buie was acquitted on the only count involving a sale in which Arlaus was a participant.

The judgment is affirmed.

⁵ Judge Cannella also told the jury: "In the question of inducement, of course, the inducement must come from the government. You cannot be entrapped by a private person. The entrapment must be done by a government official or somebody acting under his orders and direction" [R. 307].

IN THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

Present: HON. HAROLD R. MEDINA
HON. J. JOSEPH SMITH
HON. PAUL R. HAYS
Circuit Judges.

UNITED STATES OF AMERICA, PLAINTIFF-APPELLEE

v.

MICHAEL BUIE, DEFENDANT-APPELLANT

JUDGMENT—March 12, 1969

Appeal from the United States District Court for the
Southern District of New York.

This cause came on to be heard on the transcript of
record from the United States District Court for the
Southern District of New York, and was argued by coun-
sel.

ON CONSIDERATION WHEREOF, it is now hereby
ordered, adjudged, and decreed that the judgment of said
District Court be and it hereby is affirmed.

A. DANIEL FUSARO
Clerk

By: VINCENT A. CARLIN
Chief Deputy Clerk

SUPREME COURT OF THE UNITED STATES

No. 2083 Misc., October Term, 1968

MICHAEL BUIE, PETITIONER

v.

UNITED STATES

On petition for writ of Certiorari to the United States Court of Appeals for the Second Circuit.

ORDER GRANTING MOTION FOR LEAVE TO PROCEED IN
FORMA PAUPERIS AND GRANTING PETITION FOR
WRIT OF CERTIORARI—June 23, 1969

On consideration of the motion for leave to proceed herein *in forma pauperis* and of the petition for writ of certiorari, it is ordered by this Court that the motion to proceed *in forma pauperis* be, and the same is hereby, granted; and that the petition for writ of certiorari be, and the same is hereby, granted. The case is transferred to the appellate docket as No. 1559, placed on the summary calendar and set for oral argument immediately following No. 1473.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.